

**PLAINTIFFS' UNOPPOSED MOTION TO REQUEST EXTENSION
TO CONSENT DECREE DEADLINE**

Plaintiffs, the United States of America and the State of Montana, through the Natural Resource Damage Program (“NRDP”), respectfully request the Court approve an extension to the deadline for the State of Montana to perform the wetlands/riparian areas restoration required by Paragraph 22 of the 1999 Streamside Tailings Operable Unit and Federal and Tribal Natural Resource Damages Consent Decree (“1999 Consent Decree”), Dkt. No. 934.

1999 CONSENT DECREE DEADLINE

The 1999 Consent Decree requires the State of Montana to spend up to \$3.2 million to create or enhance 400 acres of wetlands or riparian areas (“Wetlands/Riparian Areas Restoration”) pursuant to a plan concurred with by the United States Fish and Wildlife Service (“FWS”) (“State Wetlands/Riparian Areas Plans”). 1999 Consent Decree at ¶ 22. The State of Montana was required to perform this work within ten years (2009) and the FWS could agree to a 10-year extension. The FWS previously agreed to an extension until 2019. After the FWS-agreed ten-year extension, the State of Montana must receive Court approval for an additional extension. *Id.* at ¶ 22.

Specifically, Paragraph 22.a. provides:

Within 10 years of the Effective Date of the Consent Decree, the State shall create up to 400 acres of any combination of the following in the Clark Fork River Basin: (a) newly constructed Wetlands or restoration of destroyed Wetlands; (b) enhancement of existing Wetlands; and (c) enhancement of riparian areas on or along the Clark Fork River or its tributaries. In fulfilling the requirements of this Paragraph, the State shall not be required to incur more than \$3,200,000 in Wetlands/Riparian Areas Restoration Costs. The United States will not require the State to acquire land to meet its obligations under this Paragraph, so long as the State can achieve the required 400 acres or \$3,200,000 cap on expenditures without such acquisition.

Regarding the deadline, Paragraph 22.e. provides:

The State and FWS may agree to extend the 10-year deadline set forth in subparagraph 22.a. (Wetlands/Riparian Areas Restoration by the State) in order to better coordinate between the implementation of the State Wetlands/Riparian Areas Plan and the Remedial Action. If the agreed upon extension is less than an additional 10 years, such

agreement shall be effective without approval of the Court. If FWS determines that the extension is a significant change to the State Wetlands/Riparian Areas Plan, FWS will provide notice and an opportunity to comment to the public no less than 60 days prior to the Effective Date of the extension. **Extensions of 10 or more years must be approved by the Court.**

(Emphasis added.)

STATUS OF 1999 CONSENT DECREE WORK

The State of Montana, through NRDP and Fish, Wildlife, and Parks, has been conducting the Wetlands/Riparian Areas Restoration under a State Wetlands/Riparian Areas Plans agreed to by U.S. Fish and Wildlife Services. FWS concurred with the State's most recent Wetlands/Riparian Areas Plans in July 2019, but the State inadvertently failed to request Court approval for the extension at that time. As of November 2022, the State has expended approximately \$1.4 million. Accordingly, approximately \$1.8 million remains to be spent on to meet the 1999 Consent Decree requirements.

The Wetlands/Riparian Areas Plan lays out a plan to complete the required work by 2029. Additionally, the State is currently evaluating additional projects that meet the requirements of the 1999 Consent Decree, in anticipation of proposing an amendment to the Wetlands/Riparian Areas Plan for FWS concurrence. The goal of identifying additional projects will be to ensure that the work will be completed well before the extended deadline of 2029, if approved by this Court.

RELIEF REQUESTED

The Plaintiffs respectfully request that the Court grant this unopposed motion and approve an extension until 2029 for the State of Montana to complete the wetlands/riparian area restoration required by the 1999 Consent Decree. Pursuant to Local Rule 7.1(c)(1), the attorneys for Atlantic Richfield Company have been contacted and they do not object to this motion.

Respectfully Submitted.

FOR THE UNITED STATES OF AMERICA

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CERTIFICATE OF SERVICE

I hereby certify that the *Plaintiffs' Unopposed Motion to Request Extension to Consent Decree Deadline* was electronically served on counsel of record via CM/ECF on January 30, 2023.

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